IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Crl.MC.No. 3588 of 2007()

C.C.NO.462/05 OF J.F.C.M-III, KOTTAYAM

PETITIONER: ACCUSED:

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1. VARGHESE PAUL, S/O. GEEVARGHESE,
   RESIDING AT MANOHAR HILL, ERAYILKADAVU DESOM,
   MUTTAMBALAM VILLAGE, KOTTAYAM.

2. RAJANI PAUL, W/O. VARGHESE PAUL,
   RESIDING AT MANOHAR HILL, ERAYILKADAVU DESOM,
   MUTTAMBALAM VILLAGE, KOTTAYAM.

BY ADV. SRI.JOSEPH KODIANTHARA

RESPONDENTS: COMPLAINANT/2ND RESPONDENT:

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1. THE SUB INSPECTOR OF POLICE,
   KOTTAYAM WEST POLICE STATION, KOTTAYAM.

2. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   OFFICE OF THE ADVOCATE GENERAL,HIGH COURT BUILDING
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3588 of 2007

Dated this the 30th day of November, 2007

O R D E R

Petitioners face indictment in a prosecution for offences punishable under Sections 406 and 409 I.P.C. Final report has been filed. Cognizance has been taken. Charges have not been framed so far, it is submitted.

2. The short contention raised before me by the learned counsel for the petitioners is that charge under Section 409 I.P.C is not liable to be framed. It is prayed that powers under Section 482 Cr.P.C may be invoked to clarify that charges are not liable to be framed under Section 409 I.P.C.

3. The matter is pending before the learned Magistrate. The learned Magistrate, after hearing the petitioner, must take a decision as to what are the offences in which charges are liable to be framed. Whatever contentions the petitioner wants to raise, can be raised before the learned Magistrate at the stage of Section 239/240 Cr.P.C, I find this petition to be absolutely unnecessary and not sustainable. Powers under Section 482

Cr.P.C are to be invoked sparingly and in exceptional cases that too only in aid of justice. If the petitioner has a grievance that the allegation raised under one particular section is not maintenable, that contention must certainly be raises before the Magistrate at the stage of Section 239/240 Cr.P.C.

4. This Crl.M.C is, in these circumstances, dismissed. I may however hasten to observe that I have not intended to express any opinion on merits on the question whether charges are liable to be framed or not under Section 409 I.P.C.

(R.BASANT, JUDGE)

rtr/-